by the COA on March 14, 2005 (*Appendix W* at App. 53). The entire time the COA was considering Campbell's Petition for Writ of Certiorari to the COSA in 2004 and 2005, Campbell had a COSA appeal pending. After Campbell was no longer in the COA but had his final judgment from that state court of last resort, he failed to file a Brief of Appellant in the COSA. His COSA appeal was subsequently dismissed April 13, 2005. Therefore, this Court has jurisdiction to consider a Campbell v. BG&E Petition or Conditional Cross-Petition for Writ of Certiorari to the COA (*Appendix F* at App. 9, paragraph 2). **Paragraph 6)** Of interest is a nearly identical case to Campbell, supra, Bradley v. Appalachian Power Co., 163 W. Va. 332, 256 S. E.2d 879 (1979). The highest court of W. Va. (The Supreme Court of Appeals of West Virginia) did find Bradley, supra, desirable and in the public interest and, moreover, converted from Contributory Negligence to a 49% comparative negligence common law. This means a Plaintiff could recover if his/her negligence was less than that of the Defendant(s). Campbell notified the COA of this fact in his Motion for Reconsideration filed January 21, 2005 (*Appendix KK* at App. 129, App. 131 - App. 137 & App. 146). The COA denied his Motion without explanation on March 14, 2005.

West Virginia's 49% Comparative Negligence law is a Contributory Negligence common law addressed by the Reply Questions Presented for Review, #7 (page i herein). In cases where two parties share all the culpability for one of the parties injuries, a judge or jury should be free to access equal culpability to the parties and expect each party to share one half of the financial liability for the

victim's medical expenses and other damages.

Can any human being objectively and accurately determine .000001% of the culpability distribution between two parties which makes the difference between recovery or no recovery for the victim? Herein lies the injustice with 50%, 49%, slight/gross, and contributory negligence laws. Each has a discontinuous boundary between no liability, some liability, or all liability. These laws are flawed due to these discontinuous boundaries. These laws invite capricious judgments by fact-finders inclusive of judges dismissing Complaints wherein a Jury Trial was elected. The later violates the 7th U. S. Amendment. By eliminating these discontinuous boundaries, Pure Comparative Negligence is created.

Paragraph 7) If the Campbell, supra, Judgment Notwithstanding the Verdict of 12/13/91 is discovered with the passage of time to be erroneous, not to revise the J. N. O. V. permits a correctable violation of the 7th U. S. Amendment to exist in history. Was Campbell's 7th U. S. Amendment right violated in Campbell v. BG&E? That federal question, is perpetuated in history until the erroneous J. N. O. V. is corrected? Therefore, by denying to revise the J. N. O. V., the federal question is decided with the answer "no" and perpetuates. Conversely, to revise the J. N. O. V. decides the federal question with the answer "yes" and the question is reduced in importance and more quickly forgotten.

Campbell felt the cost of this violated 7th Amendment yesterday, as he feels it today, and will feel it tomorrow. The federal question was decided by the

Circuit Court for Baltimore City when it denied to revise and, in effect, condoned the reexamination of the Campbell jury verdict. The federal question is decided each time Campbell is appealed.

Paragraphs 8 & 9) Petitioner hereafter attempts to further clarify the Petition or Conditional Cross-Petition that Campbell has abandoned for whatever reason. Petitioner hopes an intervenor will do likewise when he/she is granted leave to file a Petition or Conditional Cross-Petition for Writ of Certiorari to the COA.

CAMPBELL v. BG&E OPINIONS

The Order of the COA in *Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company* (Petition Docket No. 490, September Term 2004, December 23, 2004) is reprinted in its entirety at *Appendix V* (App. 52). Because the questions presented to the COA concerned a critical review of the fairness and justness of Maryland's contributory negligence common law and the COSA could not consider these questions (See *Appendix F* at App. 9), the Order of the COA was a final judgment from the Maryland court of last resort. A Notice of Appeal to the COSA was filed November 8, 2004 (*Appendix JJ* at App. 126). Campbell did not pursue a COSA Opinion in this case subsequent to November 8, 2004 because the COSA was not the Maryland court of last resort. Campbell's COSA appeal was dismissed April 13, 2005. The Order of the Circuit Court for Baltimore City, Maryland (Case No. 24-C-87323051 / CL73959, September 16, 2004) is

reprinted in its entirety at *Appendix T* (App. 50). The Order of the Circuit Court for Baltimore City, Maryland to a Motion to Alter or Amend a Judgment - Court Decision (Case No. 24-C-87323051 / CL73959, November 3, 2004) is reprinted in its entirety at *Appendix U* (App. 51). An Order of the COA in the previous appeal of *Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company* (Petition Docket No. 117, September Term 1993, July 21, 1993 reported as 331 Md. 196, 627 A.2d 538 (1993)) is reprinted in its entirety at *Appendix Q* (App. 47). The previous Opinion of the COSA in *Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company* (No. 732, September Term 1992, February 1, 1993 reported as 95 Md. App. 86, 619 A.2d 213 (1993)) is reprinted in its entirety at *Appendix O* (App. 32). The previous Judgment of the Circuit Court for Baltimore City, Maryland (Case No. 87323051 / CL73959, December 13, 1991) is reprinted in its entirety at *Appendix N* (App. 30). The previous Opinion of the Circuit Court for Baltimore City, Maryland (Case No. 87323051 / CL73959, December 13, 1991), was transcribed and is reprinted in its entirety at *Appendix M* (App. 27). *Appendix M* (App. 22) is the polling of the unanimous jury which was excused from the courtroom immediately preceded the 12/13/91 Opinion of Circuit Court (*Appendix M* at App. 27). That 12/13/91 Opinion granted a Judgment Notwithstanding the Verdict to Respondent BG&E after a jury pronounced its verdict in favor of Respondent Campbell and was excused from the courtroom. Petitioner herein alleges this was a violation of the 7th U. S. Amendment.

CAMPBELL v. BG&E JURISDICTION

An intervenor would seek this Court's review of the Order entered in Campbell v. BG&E on December 23, 2004, by the COA. The COA denied Respondent Campbell's Motion for Reconsideration by Order at *Appendix W* (App. 53) entered on March 14, 2005 and prior to Campbell missing the COSA deadline to file a Brief of Appellant, March 23, 2005. The Jurisdiction of this Court would be invoked pursuant to 28 U. S. C. § 1257(a). In accordance with Hunter v. Ohio ex rel. Miller, 396 U. S. 879 (1969), the jurisdiction of this Court would also be invoked pursuant to 28 U. S. C. § 1257(a) which replaced 28 U. S. C. § 1257(3) if an intervenor files a Petition or Conditional Cross-Petition.

CAMPBELL v. BG&E ADDITIONAL CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of Maryland, Declaration of Rights, Article 5(a) provides, in pertinent part:.

> That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of

> Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

In accordance with Supreme Court Rule 33.1(d), this Reply Brief contains verbatim text and may be 10 and 2/3rds pages long.

STATEMENT OF CASE

Campbell v. BG&E (App. L - W & App. II - LL):

This Statement of Case in Campbell Supplements what the Petition filed in this Court has already stated. Campbell's Trial Attorney, William F. Gately, presented Campbell's *last chance* defense to the Baltimore City trial judge while the jury had retired (*Appendix II* at App. 121). Despite this, the trial judge missed what the jury concluded after deliberation. The Jury had the evidence at presented to it that SRSC foreman Mark Jenkins was the one who pushed the ladder extension into the power line and caused Campbell's life threatening injuries while Campbell passively had the ladder in the vertical position.

Maryland Rule 2-519(b & d) - **Motion for Judgment.**

(b) *Disposition.* When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

(d) *Reservation of decision in jury cases.* In a jury trial, if a motion for judgment is made at the close of all evidence, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge the jury. For the purpose of appeal, the reservation constitutes a denial of the motion unless a judgment notwithstanding the verdict has been entered.

Maryland Rule 2-532(e) - **Motion for judgment notwithstanding the verdict (J. N. O. V.).**

(e) *Disposition.* If a verdict has been returned, the court may deny the motion, or it may grant the motion, set aside any judgment entered on the verdict, and direct the entry of a new judgment. If a verdict has not been returned, the court may grant

> the motion and direct the entry of judgment or order a new trial. If a party's motion for judgment notwithstanding the verdict is granted, the court at the same time shall decide whether to grant that party's motion for a new trial, if any, should the judgment thereafter be reversed on appeal.

Maryland Rule 2-535(b) - **Revisory power**.

> (b) *Fraud, mistake, irregularity.* On motion of any party filed **at any time**, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Campbell filed a Motion for Revisory Powers in the Circuit Court for Baltimore City (*Appendix T* at App. 50) on August 24, 2004. Petitioner attached a copy of this Motion for Revisory Powers to his Motion for Reconsideration in the COSA (*Appendix I* at App. 17).

The Circuit Court judge recognized it could not grant a J. N. O. V. if there was any way the Jury decision was rational, "no matter how slight," (*Appendix M* at App. 27 - 28) as did the COSA, "however slight," (*Appendix O* at App. 39).

REASON FOR GRANTING THE WRIT

This Reason for Granting the Writ in Campbell Supplements what the Petition filed in this Court has already stated. First and foremost, does the Supreme Court have jurisdiction. Is there an independent and adequate

state ground to keep the Supreme Court out of these matters involving 7th Amendment rights to preserved jury trials. Certainly, Maryland Declaration of Rights Articles 5(b), 20, and 23 encourage the grant of the preserved jury trial and preservation of the jury verdict.

In Respondent Campbell's COA appeal, he alleges an irregularity was made by the Circuit Court for Baltimore City that stripped his $4.85 million jury award using the common law of contributory negligence as an excuse. No clearer way to show that contributory negligence is a vestige of the past and is unconstitutional. When the Trial Court made the Judgment NOV, it was required to determine if there is any way the jury verdict was reachable. They missed what this Petitioner and Respondent Campbell's COA Petition have discovered. The jury verdict was possible and even reasonable. An "irregularity," as used in Rule 2-535(b), means "the doing or not doing of that, in the conduct of a suit, which, conformable to the practice of the court, ought or ought not to be done." Early v. Early, 338 Md. 639, 659 A.2d 1334 (1995). In Weitz v MacKenzie et ux., 273 Md. 628, 331 A.2d 291 (1975). See Petition No. 04-1676, pages 26-27.

As addressed by the Reply Questions Presented for Review, #6 (page i herein), the Federal 7th Amendment may require the 14th Amendment concerning due process to make the 7th Amendment applicable to States. Maryland is making great strides to keep contributory negligence while its citizens suffer.

The Supplemental Brief at page SB-4 gives English Contributory Negligence common law that Maryland Declaration of Rights, Article 5(a), imported to Maryland.

CONCLUSION

For the reasons stated herein and in Petition No. 04-1676, Petitioner prays this Court grant his petition for certiorari to the COA in Mercer v. Thomas and review the latest COA decision in Campbell v. BG&E.

In accordance with Supreme Court Rule 33.1(d), this Reply Brief contains the verbatim text of a Constitutional Provision, Maryland Declaration of Rights, Article 5(a), pages RB-6 & RB-7, and may be 10 and 2/3rds pages long.

Respectfully submitted,

Gregory Shawn Mercer
Pro Se
Counsel of Record

APPENDIX II

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

Case No: 87323051 / CL73959

****

ROBERT B. CAMPBELL, JR., Plaintiff vs.

BALTIMORE GAS & ELECTRIC COMPANY,
a body corporate, Defendant

****

BALTIMORE GAS & ELECTRIC COMPANY,
a body corporate, Third-party Plaintiff vs.

WILLIAM SIEGLEIN, et al., Third-party Defendants

****

TRANSCRIPT (December 11, 1991)

Respondent Campbell's COA
Petition paragraph **H18**
(December 2, 2004)

H18. BG&E's Motion for Judgment at the end of Plaintiff's case [E706-E732]. Petitioner filed an 87-page Opposition to [BG&E's] Motion for Judgment in Court on December 11th, 1991 [E727]:

> MS. BORTZ (Counsel for BG&E): Your Honor, at this time we would move for a judgment at the conclusion of the Plaintiff's case [E706].
>
> * * * * *
>
> THE COURT: You've really gone through all of this in your opposition. Do you want this opposition filed?
>
> MR. GATELY (Counsel for Plaintiff Campbell): Yes, I do, Your Honor.
>
> THE COURT: All right. You don't need to repeat it all.
>
> MR. GATELY: All right. The cases that Mrs. Bortz relied on, those specific cases are dramatically, factually distinguishable on the facts in the case. Then you look to the facts that we have in this case that aren't in that case. And as I say, it's the illusion, it's the combination of lines. It's the fact the Jury is entitled to say hey look, wait a minute. These things are in a vertical line. Yeah, they do – they are in fact four, five, six feet outside the fence back where these people enter the

property. Yes, gee whiz, a man [SRSC owner Sieglein] with 35 years experience came and was of the same impression, the lines are outside the fence.

That man, in turn, sent his nephew [SRSC foreman Jenkins] and his employee [SRSC employee Campbell - Petitioner] there. And gee, the man is 30 years old with 12 or 13 years experience doing this housing, doing this siding work. Mr. Jenkins, gee, he was fooled by that configuration of lines. He did the same thing. They're entitled to look at all that and say, you know, this 18 [sic. - 19] year old boy was not negligent. Everyone else was tricked by this thing the same way he was. He believed they're outside the fence. He stood there, he had his back to the wires the whole hour [sic. - two hours] and 15 minutes he was there –

THE COURT: But why do they have to move the closest point in the yard that they could move it to?

MR. GATELY: Here's why. They didn't do that by choice. Their mind set was the lines are well outside the fence. And the lower lines that remain –

THE COURT: But be careful, why wouldn't they move as far away from it as they could get?

MR. GATELY: That assumes – the line is three or four feet back, three to four feet back. The ladder

was right against the fence. They footed the ladder up, then Campbell has the right to say he's going to look – he'll raise the ladder, and he's going to take a look and see if there's anything there. He's not stupid, I trust him. And the guy pushes the ladder up. Jenkins – if Jenkins was negligent, if Jenkins was negligent, and this is where everything sort of starts sliding together down under the plaintiff.

His negligence can not be imputed to Campbell. He was the foreman, he was directing the ladder in the thing, he had the **last chance** to look up. And if a jury is ready to say he should've looked, his negligence in doing that can not be imputed to Campbell. We're giving you a whole host of cases in that proposition, Your Honor. This is a case where the jury clearly has the right to assess Campbell's conduct in this matter.

THE COURT: Madame Clerk, may I see Plaintiff's Exhibit Two? It's a photograph.

MR. GATELY: Is that my photo taken from the back of the house? Yeah, that's it.

THE COURT: Well, let me just see – let me see all of those. I think it is possible that they could've – he could've braced himself against the side of the house and had the ladder extended in the middle of the yard so it would be prepared as it's extended up to lean toward the house. Or they could've moved – they could've come back down here to the back

part of the house near the pad and instead of having the ladder leaning toward Bishop's lane, he could've braced himself against the fence and had the ladder leaning toward the back porch and then moved it over. I don't know why in the world they would just go over as far as they could toward the line, and try to extend the ladder there. I mean this yard is so narrow.

MR. GATELY: And here's the reason if I can see that further, Your Honor. Here's the reason according to Jenkins' testimony –

THE COURT: This is Plaintiff's Three.

MR. GATELY: Here's the reason according to Jenkins' testimony. When you come into this yard back here, this plane of lines certainly appears to be well outside the fence. That's the mind set that Jenkins has. He says these wires are well outside of this fence. That sticks in his mind. He moves the ladder down there. When he's getting ready to move it – he doesn't – he's never testified I saw that one wire way up there, and I know that that encroached in. Because you remember, Your Honor –

MS. BORTZ: Exception – Your Honor.

MR. GATELY: – these wires all run to the same pole. These wires all run from the same pole. This

high wire runs and is connected --

THE COURT: I know. It's on a cross arm.

MR. GATELY: On a cross arm. It encroaches in. Jenkins never said I knew they were well outside the fence, but I knew that one was going to drift in and tie into the cross arm. He doesn't know that, he's never testified that he knew that. Your Honor, he made a mistake. Put it this way, he was wrong. But that's the reason why he believed these wires were out there and they could raise this ladder here.

In any event, he called Campbell over, and he directed the raising of the ladder. The ladder did not touch those lower wires. Had that wire up there, the very top wire, been tied to that outside cross arm and all these other wires been well outside the fence, we would not have had this accident.

THE COURT: We don't know that.

MR. GATELY: Yes, we do know that.

THE COURT: Well that may or may not be true. But it's still hard to ignore the fact that they moved as close to the line as they could get, rather than being as far away from it as they could get.

MR. GATELY: That sounds as though they chose to move as close to the line, Your Honor.

THE COURT: But they did make a choice, didn't they?

MR. GATELY: The ladder – the ladder foot was against the fence. When they raised it, that's where it is. They believe – Jenkins believes, Jenkins consciously believes all the other lines are three to four feet outside of the fence. He's one to two feet inside the fence. He's going to show up – shell up [sic. - shove up]. He doesn't know that one is encroaching over.

THE COURT: All right.

MR. GATELY: Now if that's a mistake on his part, and if that mistake rises to the level of negligence, that is not imputable to Campbell. Campbell didn't make the choice of how, when and in what way to raise the ladder. You laugh, Your Honor, or you seem to discredit the distinction –

THE COURT: I'm not laughing. I haven't laughed at all.

MR. GATELY: Okay. You seem to make little –

THE COURT: I giggled the –

MR. GATELY: I meant latter – earlier. You seem to diminish the foreman/supervisor distinction.

THE COURT: Oh, I said – I said that I thought that it was a certain silliness to try to make such a strong argument about a two-worker company, that one was a foreman over the other.

MR. GATELY: The point is that he was foreman and he supervised, he directed how that ladder was to be risen, and I think that's critical in the case law, and I think the Jury's certainly entitled to assume that.

THE COURT: I know you do. I know you do. I don't think it's as critical as you do. I'm going to reserve on the motion. All right, bring the Jury. Looks like we're only going to have time for one witness. How long is this witness going to be, Miss Bortz [E727-E732]?

APPENDIX JJ

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

Case No: 24-C-87323051 / CL73959

ROBERT B. CAMPBELL, JR., Plaintiff vs.

BALTIMORE GAS & ELECTRIC COMPANY, a body corporate, Defendant

NOTICE OF APPEAL
(November 8, 2004)

COMES NOW Plaintiff, Robert B. Campbell, Jr. (hereafter Appellant), in accordance with Maryland Rule 8-201 & 8-202(c), and appeals to the Court of Special Appeals of Maryland three (3) Circuit Court of Baltimore City Judgments:

a) Plaintiff's Maryland Rule 2-342 Motion for Leave to Amend Motion for Revisory Powers and Request for Hearing which was denied the 16th day of September, 2004.
b) Plaintiff's Maryland Rule 2-535(b) Motion for Revisory Powers which was denied the 16th day of September, 2004.
c) Plaintiff's Maryland Rule 2-534 Motion to Alter or Amend a Judgment - Court Decision which was

denied the 5th day of November, 2004.

Respectfully submitted,

s/ Robert B. Campbell
Robert B. Campbell, Jr., pro se
683 Windsor Drive
Westminster, Maryland 21158
410-840-8890

APPENDIX KK

IN THE COURT OF APPEALS OF MARYLAND

Petition No. 490, September Term 2004

ROBERT B. CAMPBELL, JR., Petitioner vs.

BALTIMORE GAS & ELECTRIC COMPANY, a body corporate, Respondent

MOTION FOR RECONSIDERATION
(January 21, 2005)

COMES NOW Petitioner, Robert B. Campbell, Jr., pro se, in timely accordance with Maryland Rule 8-605(a), and states the following:

1. The date of this Court's denial Order is also the date that the Petitioner filed his Reply to Response/Answer to Petition for Writ of *Certiorari*, December 23, 2004. The Petition for Writ of *Certiorari* was filed December 2, 2004 and preceded this Court's latest denial Order by only 21 days. This Court's denial Order states, "Upon consideration of the petition for writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is ORDERED, ..." It appears to Petitioner that his Reply to Response/Answer was not considered by this Court. Petitioner respectfully moves this Court to consider his Reply to Response/Answer in addition to the content of this Motion for Reconsideration

before deciding the disposition of this Petition.

2. Comparable case law exists in Brenda Sue Bradley v. Appalachian Power Company; Brady Napier v. Elk Grocery Company, Appeal Nos. 14310 & 14345, Supreme Court of Appeals of West Virginia, 163 W. Va. 332, 256 S.E.2d 879 (1979) where **the highest court of West Virginia did find a West Virginia Kanawha County Circuit Court case *desirable and in the public interest* for review (see attachments) and which is analogous to the underlying Maryland Baltimore City Circuit Court case, Campbell v. Baltimore Gas and Electric Corporation, Case No. 87323051 / CL73959 or 24-C-87-323051, discussed in this appeal**. In fact, the highest court of West Virginia changed its Contributory Negligence common law to a 49% modified Comparative Negligence common law based on the review of the analogous Kanawha County Circuit Court case and one other case. Maryland's General Assembly came closest to adopting a 49% modified Comparative Negligence common law with SB21 in 1985. Petitioner advocates judicially abrogating Maryland's Contributory Negligence common law for the 49% modified Comparative Negligence common law based on SB21 from 1985 in his Petition for Writ of *Certiorari* to the Court of Special Appeals being reconsidered herein (See paragraph **H36** and page 25 of Petition).

3. Further, unlike Petitioner's previous appeals in 1992-93 which could not have advanced to the Supreme Court of the United States of America due to that Court's respect for States' Rights, this appeal gives an instance where Maryland Rule 2-532 was erroneously applied by

the Circuit Court to overturn a lawful and reasonable jury verdict favorable to Petitioner. The rationale for applying Maryland Rule 2-532 was that Petitioner had been Contributorily Negligent as a matter of law ***without any further inquiry into whether that Contributory Negligence as a matter of law was, in fact, a cause of Petitioner's injury***. In this appeal, Petitioner alleges that a common law which is not free and clear from doubt as to have statutory status, Contributory Negligence, was erroneously used via Maryland Rule 2-532 to violate Petitioner's Right to a Jury Trial elected in his original Complaint on or about November 19, 1987. Petitioner's Rights found in Maryland Declaration of Rights (Articles 5, 20, and 23) and United States Constitutional Amendment 7 have been violated using a common law contrary to Maryland Declaration of Rights, Article 5(a).

4. Maryland Declaration of Rights, Article 5(a) states, "That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury ... except such as ... may be inconsistent with the provisions of this [Maryland] Constitution." The English case Butterfield v. Forrester, 11 East 60, 103 Eng. Rep. 926 (K. B. 1809) (See paragraph **H28** in Petition) created the common law of Contributory Negligence in England. In this appeal, the common law of Butterfield v. Forrester is inconsistent with the provisions of the Maryland Constitution found in the Maryland Declaration of Rights (Articles 5, 20, and 23). **Either Maryland's Contributory Negligence common law is unconstitutional or Maryland's Declaration of Rights (Articles 5, 20, and 23) are unconstitutional. This appeal tests the constitutionality of Maryland's**

Contributory Negligence common law and is *most desirable and in the public interest* for review by this Court.

5. Petitioner alleges the Circuit Court Judge missed the inference that the Jury Verdict was a Last Clear Chance Jury Verdict which lawfully and reasonably awarded Petitioner $4.85 million in December of 1991. The Judge should not have granted BG&E' s Motion for Judgment NOV without first determining if Petitioner's Contributory Negligence as a matter of law was a cause of Petitioner's injury. Contributory Negligence as a matter of law has been affirmed on appeal in the Court of Special Appeals but whether that Contributory Negligence as a matter of law was a cause of Petitioner's injury has never been reviewed by any appellate court. This is a necessary element of a BG&E affirmative defense of Contributory Negligence. The Circuit Court retains jurisdiction on this issue of whether Petitioner's negligence was a cause of his injury and the Petitioner was proper to file a Maryland Rule 2-535(b) Motion for Revisory Powers. ***Respondent has even concurred with this fact indirectly in Paragraph 3 of Response/Answer to Petition for Writ of Certiorari by stating that the issue of Last Clear Chance has not been previously raised in the Court of Special Appeals.***

6. In Brenda Sue Bradley v. Appalachian Power Company, Civil Action No. 12,564, in the Circuit Court of Kanawha County, West Virginia, the Plaintiff was the Administratrix of the Estate of Ernest Edward Bradley, her late husband. On the day of the accident, August 6, 1971, Ernest was 33, Brenda was 26, they had been married for one year eight months, and they had two children aged 2

and 3 with Brenda 2 months pregnant with a third child.

7. Ernest worked as a dump truck driver for the Scales Company which was contracted to deliver coal from a mountain where it had been stripped to the hopper of a specific "tipple" where conveyer belts moved the coal to a crusher and the coal was loaded into train(?) "cars". Ernest would back his dump truck up on the non-level road surface to the hopper where he dumped the coal from the bed of his truck. Approximately 200 feet from the hopper and above the uneven road was a primary, uninsulated power line. The lowest point in the "sag" of the power line was measured as 20 feet 1 inch above the non-level road by an employee of the Appalachian Power Company, Jimmie Butcher. It was a fact in dispute as to whether the power line was actually the recommended standard National Electric Safety Code (N. E. S. C.) height of 20 feet above the non-level road surface across the entire approximately 30-foot or 40-foot wide uneven road where Ernest raised the bed of his dump truck into the power line igniting the tires of the dump truck simultaneously causing Ernest's electrocution and death.

8. The owner of the company that was contracted to oversee delivery of coal to that tipple, Arthur C. Rogers, and who contracted with the Scales Company for dump truck service never asked Appalachian Power Company to move, to raise, and/or to insulate the power lines in the three years prior to the accident nor the year subsequent to the accident at which time Mr. Rogers sold his company. That a dump truck bed would eventually hit the power line without the power line being moved, raised, and/or insulated was arguably foreseeable by Appalachian Power

Company, a corporation.

9. Ernest's widow, Brenda, as Administratrix of Ernest's Estate, sued Appalachian Power Company in a wrongful death suit and elected a jury trial. She requested the following jury instruction (Plaintiff's Instruction No. 1) on Comparative Negligence, was refused, and she made an objection:

> The jury is instructed that in this action, the fact that Ernest Edward Bradley, the decedent may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to Ernest Edward Bradley, deceased.
>
> So, if you should find, from a preponderance of the evidence in this case, that the defendant, Appalachian Power Company, a corporation was guilty of negligence which caused, in whole or in part, any injury or death to the plaintiff, Ernest Edward Bradley, and should you further find, from a preponderance of the evidence in the case, that the plaintiff's decedent was guilty of some contributory negligence which contributed toward bringing about all or part of his own injury; then the total award of damages to the plaintiff must be reduced by an amount equal to the percentage of fault or contributory negligence chargeable to the plaintiff.

10. According to Plaintiff's Petition for Appeal

which the Defendant apparently did not refute, Appalachian Power Company requested and received the following jury instruction (Defendant's Instruction No. 15) on contributory negligence:

> The Court instructs the jury that the law does not permit a person to recover damages for injuries to which his own negligence contributed, even in the slightest degree.
>
> Therefore, even if you believe from a preponderance of the evidence in this case that the defendant was guilty of negligence which was a proximate cause of the accident, still, if you further believe from the evidence that the plaintiff's decedent was also guilty of negligence and that such negligence on his part proximately contributed to the accident, even in the slightest degree, then the law does not permit you to balance or compare the degrees of negligence of which the plaintiff and the defendant may be guilty, but in such case, the plaintiff is not entitled to recover anything in this action and your verdict should be for the defendant.

11. However, according to the transcript of the trial as transcribed by the Official Reporter of the Circuit Court of Kanawha County, West Virginia, Caryl T. Burke, Defendant's Instruction No. 15 was requested and refused due to the Court's earlier choice to give a modified Plaintiff instruction (Plaintiff's Instruction No. 2-A):

(Original Plaintiff's Instruction No. 2) The Court instructs the jury that if you believe by a preponderance of the evidence that the defendant, Appalachian Power Company, a corporation, negligently caused the plaintiff's decedent, Ernest Edward Bradley, to be electrocuted, and as a proximate cause thereof the plaintiff's decedent, Ernest Edward Bradley, died then your verdict may be for the plaintiff, Brenda Sue Bradley, Administratrix of the Estate of Ernest Edward Bradley, Deceased, and against the defendant, Appalachian Power Company, a corporation, **(to which the Court added - Plaintiff's Instruction No. 2-A)** unless you further believe that the decedent, Ernest Edward Bradley, was negligent, which negligence proximately caused or contributed to his death.

Additionally, Defendant's Instruction No. 16 was given:

The Court instructs the jury that it was the duty of the plaintiff's decedent, Ernest Edward Bradley, in performing his work at the scene of the accident in question to use reasonable care for his own safety and not to negligently expose himself to dangers, which he knew existed, or which in the exercise of ordinary care, he should have known existed. Therefore, if you find from a preponderance of evidence in this case that Ernest Edward Bradley at the time and place of the accident in question, knew or in the exercise of

> ordinary care should have known that the power line crossed the roadway and of the dangers involved in raising the bed of his truck to come in contact with the power line and failed to exercise ordinary care for his own safety and that such failure, if any, on his part proximately contributed to the accident, even in the slightest degree, then the plaintiff is not entitled to recover anything in this action and your verdict should be for the defendant.

12. The Jury in the Circuit Court case of Bradley v. Appalachian Power Company, supra, found for the Defendant, the Plaintiff moved the Circuit Court to set aside the Jury Verdict and order a new trial on the grounds that the Court erred by failing to grant Plaintiff's Comparative Negligence instruction, and the Court denied Plaintiff's Motion for a New Trial. Plaintiff filed a Petition for Appeal limited to one issue which was granted on October 16, 1978, by the Supreme Court of Appeals of West Virginia (See attachments hereto):

> 1. The petitioner submits that the Trial Court erred in refusing to grant the petitioner's motion for a new trial on the grounds that the Trial Court erred in refusing to grant the petitioner's instruction on comparative negligence.

On appeal, the Supreme Court consolidated Plaintiff's appeal, Brenda Sue Bradley v. Appalachian Power Company, Appeal No. 14310, with a similar appeal, Brady

Napier v. Elk Grocery Company, Appeal No. 14345. Plaintiffs Bradley and Napier(?) won their appeals and West Virginia became a 49% modified Comparative Negligent State in 1979.

13. In Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company, a body corporate, Case No. 87323051 / CL73959 or 24-C-87-323051, in the Circuit Court of Baltimore City, Maryland, the Petitioner herein (Robert B. Campbell, Jr.) was also electrocuted by a primary, uninsulated power line which was foreseeably negligently placed by a power company, but electrocution was on April 7, 1986 and the Petitioner survived. The power line failed to meet the recommended standard National Electric Safety Code (N. E. S. C.) separation of 10 feet from a residential structure and was 29 feet 6 inches above the ground and parallel to the 34-foot-high side of an approximately 75-year-old house. That the 75-year-old house would require maintenance along this side and that workmen would work within 10 feet of the primary, uninsulated power line was arguably foreseeable by Baltimore Gas and Electric Company, a body corporate. At trial based on the evidence, the jury found that BG&E was negligent in maintaining the power line because it did not move, raise and/or insulate the power line where electrical contact was foreseeable.

14. Petitioner was 19-years-old and worked for Sieglein Roofing and Siding Company (hereafter SRSC) cutting and bending a form of siding called soffit and fascia at a "cutting table" for the 32-year-old SRSC foreman, Mark S. Jenkins. Approximately two hours after SRSC commenced work at the new work site, after SRSC

owner/employer, William P. Sieglein, had completed his second inspection of the work site this time with the SRSC foreman at his side, after the SRSC employer had failed to notify BG&E to move, raise, and/or insulate the power line contrary to the Code of Maryland, after SRSC employer Sieglein had verbally warned SRSC foreman Jenkins to watch for power lines, the SRSC foreman Jenkins called SRSC employee Campbell (Petitioner herein) over from the cutting table to steady the base of a 40-foot unextended ladder approximately 21 feet tall. Petitioner had noticed the power lines two hours earlier and had dismissed any safety concerns caused by them due to their placement outside the work-site, property-line fence.

15. At the moment Petitioner grabbed and steadied the unextended 40-foot ladder using the fence to brace himself, the relevant power line was approximately 8 feet higher than the top of the unextended ladder. ***Petitioner's act of steadying the ladder did not cause electrical contact nor cause him any injury***. However, Petitioner did not look upward as his concentration was focused on steadying the base of the ladder for the SRSC foreman who wished to work at the 34-foot-high peak of the house. While Petitioner steadied the base of the ladder, SRSC foreman Jenkins extended the ladder by pushing up on the extending portion of the ladder and climbed while continuing to extend the ladder looking in the direction of the relevant power line. Roughly two hours earlier, SRSC foreman Jenkins had been admonished to watch for just such a power line by the SRSC owner/employer Sieglein.

16. When electrical contact was made with the 7,620-volt, uninsulated power line 29 feet 6 inches above

the ground, only the Petitioner was injured as he grounded the ladder with his body to the fence. Foreman Jenkins was able to jump from the ladder unharmed. Petitioner was electrocuted, suffered deforming injuries to his hands and arms, was badly burned, and is now permanently disabled. ***The extension of the ladder by the SRSC foreman had been the proximate cause of Petitioner's electrocution injuries and followed the SRSC employer's failure to notify BG&E to move, to raise, and/or to insulate the power lines in accordance with the Code of Maryland.***

17. Petitioner's failure to look upward for the uninsulated power line approximately 8 feet above the top of the ladder while steadying the ladder was Contributorily Negligent as a matter of law as determined by the Circuit Court and affirmed by the Court of Special Appeals of Maryland. This Contributory Negligence as a matter of law was not sufficient to cause electrical contact, electrocution, nor injury. ***Neither the Circuit Court nor the Court of Special Appeals ever considered whether Petitioner's Contributory Negligence as a matter of law was a proximate cause of Petitioner's injuries.***

18. At trial, the Circuit Court had instructed the jury twice on Contributory Negligence based on evidence presented to the jury which supported a Last Clear Chance defense for the Petitioner. The jury which arguably contained a personal injury attorney named Pauline Olsen who would have had knowledge of Last Clear Chance arguments deliberated 8 years after a Last Clear Chance argument was used successfully in Cohen v. Rubin, 55 Md. App. 83, 460 A.2d 1046 (1983). This permitted any

subsequent juror and/or jury to deliberate with and apply Last Clear Chance arguments before reaching a jury verdict. **However, the Circuit Court in Campbell v. Baltimore Gas and Electric Company, supra, provided the jury with a jury sheet which had a defective question #2 which precluded the jury from finding Petitioner Contributorily Negligent but not a cause of his own injury and then permit the jury to give the Petitioner an award (See H13 below: *Answer question #2 "yes" then try to follow the jury sheet and reach questions #3 through #6 to make a jury award - This is not possible!*)**:

> **H12.** Circuit Court instructed Jury twice. Once after it requested re-instruction while deliberating, Motion for Revisory Powers, page 4:
>
> > 7. The jury received jury instructions, began deliberation, then requested to be re-instructed on Contributory Negligence:
> >
> > > A Plaintiff cannot recover if his negligence is a cause of his injury. ... To ... be barred, the negligence must be a cause of an injury [E882].
> >
> > * * * * *
> >
> > > A Plaintiff cannot recover if his negligence is a cause of his injury [E894].

H11. The available Last Clear Chance defense that existed for the Petitioner at the end of all evidence was:

a) SRSC employer was Primarily Negligent (Maryland Annotated Code, Article 89, §§ 58-60 attached to Petition).

b) SRSC employer was aware of the Primary Negligence situation of peril and communicated a warning concerning this to the SRSC foreman.

c) Petitioner was Contributorily Negligent (Maryland Annotated Code, Article 89, §§ 58, 60-61 attached to Petition).

d) Petitioner's Contributory Negligence by itself was not sufficient to cause his injuries.

e) Primary and Contributory Negligence were not concurrent so SRSC clearly made the original mistake.

f) SRSC foreman was Secondarily Negligent (Maryland Annotated Code, Article 89, §§ 58, 60-61 attached to Petition).

g) Secondary Negligence was new and independent of Primary Negligence.

h) SRSC foreman looked upward toward the line-to-ground, RMS, 7,600-volt power line which was located in plain view above while pushing up on the ladder extension and was aware of the Secondary Negligent situation of peril previously brought to his attention by the SRSC employer a couple

hours earlier (Maryland Annotated Code, Article 89, §§ 58, 60, and 61).

i) The Last Clear Chance fresh opportunity was of a considerable amount of time as compared to 7.33 seconds in Cohen v. Rubin, 55 Md. App. 83, 460 A.2d 1046 (1983) where a Last Clear Chance defense was used successfully (See **H33**).

H13. After Cohen v. Rubin, supra, any Maryland Jury was empowered to deliberate with the Last Clear Chance theory. The actual Jury Verdict Sheet in Robert B. Campbell v. Baltimore Gas and Electric Company, Case No. 87323051 / CL73959, December 13, 1991 with the Jury findings [E83-E84, E895-E898] (attached to Petition) was:

1. Was BG&E negligent? Yes _X_ No ___
2. Was Robert Campbell contributorily negligent? Yes ___ No _X_

   [If the answer to #2 is "no," then continue; if "yes," then stop.]
3. Did Robert Campbell assume the risk of his injury? Yes ___ No _X_
4. Was Mark Jenkins negligent? Yes ___ No _X_
5. Was William Sieglein negligent? Yes _X_ No ___
6. In what amount do you award damages?

   $ 4,850,000

H14. This Jury Verdict was a Last Clear Chance Jury Verdict:

William Sieglein was most associated with SRSC in the trial due to BG&E suing "William P. Sieglein trading as Sieglein Roofing and Siding Company". Sieglein's Motion Inlimini to prevent BG&E from referring to Sieglein the individual as the person responsible for notifying BG&E of the proximity of power lines to SRSC employees had been denied. SRSC foreman Mark Jenkins was not negligent, the company he worked for was negligent. Robert Campbell's Contributory Negligence was not a cause of his injury, SRSC foreman's pushing up to extend the ladder was the proximate cause of Petitioner's injury in accordance with the Jury Instructions given two times. Robert Campbell had been directed by his supervising foreman to hold the ladder steady. Additionally, the Jury found BG&E to be negligent. Therefore, Petitioner could have and should have recovered the Jury award from SRSC and BG&E jointly and severally.

H15. The Jury Verdict Sheet ambiguous Question No. 2:

> Was Robert Campbell contributory negligent? Yes ___ No ___ [E83 - E84].
>
> [If the answer to #2 is "no," then continue; if "yes," then stop.]

H16. To avoid ambiguity, the Jury Verdict Sheet Question No. 2 should have been:

> Was Robert Campbell contributory negligent and, if so, was his contributory negligence a cause of his injuries? Yes ____ No ____
>
> [If the answer to #2 is "no," then continue; if "yes," then stop.]

H17. At trial, there was prospective juror #3 who was a personal injury attorney, Pauline Olsen. Motion for Revisory Powers, pages 5-6:

> 14. Prospective Juror No. 3, attorney Pauline Olsen (spelled phonetically "Olson" in Transcript) [12/4/91 Trial Transcript pages 8, 43, 58, 63 - 64 attached to Petition], was at the top of the juror list after Voir Dire but before the four trial counsel exercised their strikes (4 each). This prospective juror knew of Last Clear Chance theory. The Trial Judge informed counsel the jurors were to be seated starting from the top of the juror list [page 63].

19. Also at trial, Petitioner requested the following jury instruction (Plaintiff's Request No. 16) on Comparative Negligence, was refused, and made an objection:

> **H20.** Petitioner's Request for Jury Instructions included a Comparative Negligence Instruction, Request No. 16. The Circuit Court denied this instruction and Petitioner noted his exception [E887-E888]:
>
> > If you find that plaintiff was negligent, and that his negligence contributed to his injuries, then you must determine the relative contributions (on a percentage basis) of the defendant BG&E's negligence and the plaintiff's negligence to those injuries and damages. Your assessment of the dollar value of the plaintiff's damages will then be reduced by the Court by the percentage which you attribute to the plaintiff's negligence [E927].

20. On appeal to the Court of Special Appeals of Maryland in 1992-93, the only two issues that Court considered were:

> 1. Whether the trial court erred in finding contributory negligence as a matter of law and granting BG&E's Motion for Judgment NOV.

2. Whether the trial court erred in refusing to instruct the jury on comparative negligence.

The Court of Special Appeals found Contributory Negligence as a matter of law ***without any further inquiry into whether that Contributory Negligence as a matter of law was, in fact, a cause of Petitioner's injury***. Also, the Court of Special Appeals followed this Court's precedent and found no error by the trial court in refusing to instruct the jury on Comparative Negligence which is a State Right in the opinion of the Supreme Court of the United States of America. The previous Petition to this Court in 1993 was denied.

21. Comparing the Circuit Court cases Bradley v. Appalachian Power Company, supra, and Campbell v. Baltimore Gas and Electric Company, supra, both cases involve electrocution by primary, uninsulated power lines placed by power companies where injurious or deadly electrical contact was foreseeable. Both cases commenced in Contributory Negligence States where the Plaintiffs' requested Comparative Negligence jury instructions to overcome Contributory Negligence were refused by the Circuit Court. In both cases, the victims were workmen who worked at job sites where the employer in charge could have contacted the power company to move, to raise, and/or to insulate the relevant power line but did not contact the power company. On appeal, both Plaintiffs requested review of whether the Circuit Court erred in not giving the comparative negligence instruction the difference being that West Virginia, which does not have an intermediate appellate court, was not required to hear

Bradley's appeal but found it ***desirable and in the public interest*** to hear Bradley's case.

22. The highest appellate court of Maryland, this Court, chose not to hear Petitioner's previous appeal in 1993 despite 46 other states having adopted some form of Comparative Negligence. Where West Virginia considered an analogous case ***desirable and in the public interest*** for review, this Court exercised a State Right in denying Petitioner's 1993 Petition. Petitioner was discouraged from continuing his appeal to the Supreme Court of the United States of America which respects States' Rights. The issues of whether the Maryland Circuit Court erred in failing to give Petitioner's Comparative Negligence instruction and of whether Petitioner was Contributory Negligent as a matter of law which was affirmed by the Court of Special Appeals are Res Judicata now. Petitioner's Petition for Writ of *Certiorari* to the Court of Special Appeals filed in this Court in 1993 was denied.

23. However, there has been no appellate review of whether Petitioner's Contributory Negligence as a matter of law was a cause of his injury and reasonable minds of a jury could find and actually might have already found in December of 1991 that it was the extension of the ladder by the SRSC foreman Jenkins along with the negligent placement of the power line by Baltimore Gas and Electric Company which were the proximate causes of this Petitioner's injuries. Where Maryland Declaration of Rights, Article 23, states "the right to trial by Jury of all issues of fact in civil proceedings ... shall be inviolably preserved," for the Circuit Court Judge to miss an

inference in the light most favorable to the Petitioner contrary to Maryland Rule 2-519(b) that the jury verdict was lawful and reasonable and for the Judge to erroneously grant BG&E's Judgment NOV via Maryland Rule 2-532 using Contributory Negligence to overturn that lawful and reasonable jury verdict makes this case ***most desirable and in the public interest***. ***The very constitutionality of Maryland's Contributory Negligence common law is brought into question because Contributory Negligence was used to violate Petitioner's rights to a Jury Trial which he elected on or about November 19, 1987 in his original Complaint.*** Petitioner alleges the application of Maryland Rule 2-532 by the Circuit Court Judge at trial in this case was an irregularity subject to Maryland Rule 2-535(b). Petitioner alleges the Circuit Court still retains jurisdiction over this issue.

24. Petitioner Campbell believes the issues raised by Petitioner Mercer in his Petition and Motion for Reconsideration now before this Court are similar and his issues parallel this Petitioner's issues. Despite 46 other states adopting some form of Comparative Negligence at least 13 years ago, the Maryland judicial and legislature branches of government are steadfastly resistant to change from Contributory Negligence. Petitioner wonders why this is. This change will eventually come to Maryland and seems destined to come from those most effected by the injustice of Contributory Negligence, Maryland citizens like this Petitioner.

WHEREFORE, Petitioner Robert B. Campbell, Jr., pro se, respectfully requests that this Court's denial Order

of his Petition for Writ of *Certiorari* to the Court of Special Appeals be reconsidered and the Petition be granted.

Respectfully Submitted,

s/ Robert B. Campbell, Jr.
Robert B. Campbell, Jr., pro se
683 Windsor Drive
Westminster, Maryland 21158
410-840-8890

(4)

No. 04 - 1676

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY SHAWN MERCER,

Petitioner,

V.

WILLIAM ALOYSIOUS THOMAS, III, ET AL.,

Respondents.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

SUPPLEMENTAL BRIEF WITH APPENDIX TT:

In re GREGORY SHAWN MERCER, PETITIONER

GREGORY S. MERCER, PRO SE
Counsel of Record
3114 Borge Street
Oakton, Virginia 22124
(703) 591-4662

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

SUPPLEMENTAL BRIEF SB-5

Appendix LL
Order of the Court of Appeals of Maryland, July 18, 2005 App. 150

Appendix MM
Motion to Order or Compel, Motion to Appoint Counsel for Jury, Motion to Extend Leave for Jury to Intervene and File a Conditional Cross-Petition for Writ of Certiorari App. 151

Appendix NN
Clerk's Letter Denying Motions in Appendix MM Above App. 159

Appendix OO
Four Documents Concerning the Present Contents of the Campbell v. BG&E, Circuit Court for Baltimore City, Maryland Record App. 161

TABLE OF CONTENTS - CONTINUED

Appendix PP
Application for Extension of Time to File Petition for Writ of Certiorari to the Court of Appeals of Maryland App. 168

Appendix QQ
Clerk's Letter Denying Application in Appendix PP Above App. 175

Appendix RR
Memorandum Concerning the Joining of Court of Appeals of Maryland Mercer and Campbell Petitions App. 177

Appendix SS
Petitioner's Letter to Clerk Requesting Application be Sent to Circuit Justice, Chief Justice Rehnquist App. 179

Appendix TT
Petition for Common-Law Writ of Certiorari to the Court of Appeals of Maryland (*In re* Gregory Shawn Mercer, Petitioner) App. 189

TABLE OF AUTHORITIES

28 U.S.C. § 1257(a) App. 170

28 U.S.C. § 1651(a) App. 170

Amendment VII to the U. S. Constitution SB - 6, App.156, 171

Far East Conference v. United States, 342 U.S. 570 (1952) App. 194 or iv

In re Leaf Tobacco Board, 222 U.S. 578 (1911) SB - 7, App. 170

United States Alkali Export Association v. United States, 325 U.S. 212 (1945) App. 194 or iv

Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 390 (1982) App. 170 - 171

SUPPLEMENTAL BRIEF

C. In paragraph **A** on page SB - 1 in the previous Supplemental Brief filed with Reply Brief on July 22, 2005, Petitioner stated the Court of Appeals of Maryland (hereafter "COA") denied his last COA filing on July 18, 2005. That COA Order is included in this filing (*Appendix LL* at App. 150).

The fact Petitioner elected a Jury Trial which was denied by the Circuit Court for Prince George's County was before the COA when it Ruled on December 23, 2004 (*Appendix J* at App. 18) and again on March 14, 2005 (*Appendix K* at App. 19). This Federal Question deserved to be certified. Petitioner emphasizes his first question presented for review to this Court: Whether or not Maryland's highest court evaded federal claims in cases/appeals involving contributory negligence.

D. On June 13, 2005, Respondent Campbell missed a deadline to file a Petition in this Court (Rule 13.3). However, he was named as a Respondent in the Petition for this case which was put on the docket June 14, 2005. Campbell had until July 14, 2005 to file a Conditional Cross-Petition (Rule 12.5). Petitioner considered the possibility that Respondent BG&E settled with Campbell to keep Campbell out of this Court and isolate the Petitioner.

On July 14, 2005, Petitioner filed a Motion to Order or Compel [to learn the identity of the Campbell v. BG&E, December of 1991 jury members] / Motion to Appoint Counsel for Jury / Motion to Extend Leave for Jury to

Intervene and File a Conditional Cross-Petition for Writ of Certiorari (*Appendix MM* at App. 151). Petitioner's Motion was denied in the first instance and returned by the Clerk (*Appendix NN* at App. 159). This Court does not Order or Compel nor Appoint Counsel prior to a Petition being granted and scheduled for Oral Argument according to Chief Deputy Clerk Christopher W. Vasil.

The 7th Amendment which Petitioner argues was violated in Campbell, supra, states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Petitioner searched for the jury and attempted to find the Campbell file at the Maryland State Archives, Court of Special Appeals of Maryland, and Baltimore City Circuit Court (hereafter "MSA," "COSA," and "BCCC" respectively). Petitioner hoped to learn the identity of any Campbell jury members from documents in the case file. What Petitioner learned is that the first five of six folders prior to December 20, 1991 have been misplaced or destroyed (*Appendix OO* at App. 161). The lost folders contained the December 4, 1991 Voir Dire Sheets with prospective jurors names and the December 13, 1991 Jury Verdict Sheet signed by the Forewoman. Petitioner was not going to find an intervenor for Campbell from the Campbell Jury.

Petitioner decided to file a Petition for Common-Law Writ of Certiorari to the COA. The 150th day after Campbell's petition for rehearing denial (See *Appendices W & KK* at App. 53 & 128) is August 11, 2005. On August 1, 2005, Petitioner filed an Application to Chief and Circuit Justice Rehnquist for Extension of Time to File a Petition for Writ of Certiorari to the COA (*Appendix PP* at App. 168). Petitioner's Application was denied in the first instance and returned by the Clerk (*Appendix QQ* at App. 175). According to Deputy Clerk Jeffrey Atkins and despite *In re* Leaf Tobacco Board, 222 U.S. 578 (1911), Petitioner was not a COA joined party to Campbell, supra.

Petitioner went to the COA to get some documentary evidence that Campbell, supra, and Mercer, supra, were joined. All the COA would let Petitioner have despite his persistence was a Memorandum from the COA Clerk to the COA judges (*Appendix RR* at App. 177). Petitioner included this Memorandum as an exhibit in a letter to the Honorable William K. Suter, Clerk which was filed August 10th, 2005 requesting the Clerk-denied Application be sent to Chief and Circuit Justice Rehnquist (*Appendix SS* at App. 179). This letter includes exactly what each COA Petition stated about the other COA Petitioner's case and that both COA Petitioners were attempting to join the other via Maryland Rule 8-401(a). Deputy Clerk Jeffrey Atkins believed the Memorandum was still insufficient to prove the joining of the cases.

If the COA would only let Petitioner have this insufficient Memorandum and will give no further evidence that the cases were joined, this was evasion. Petitioner re-emphasizes his first question presented for

review to this Court: Whether or not Maryland's highest court evaded federal claims in cases/appeals involving contributory negligence.

E. WHEREFORE, will Respondent BG&E be allowed to influence Respondent Campbell and cause this Court to ignore an alleged violation of the 7th Amendment? Alternatively, if Campbell has gotten disillusioned and given up hope for recovery through legal means, will this Court then ignore an alleged violation of the 7th Amendment?

There are in issue important questions regarding the relation between the 7th Amendment to the United States Constitution and a law which has been used to overturn jury verdicts, Contributory Negligence. Petitioner prays this Court will use one of his Petitions to review COA Campbell v. BG&E, Petition Docket No. 490, September Term 2004 (Either Petition No. 04-1676 or the Petition for Common-Law Writ of Certiorari in *Appendix TT* at App. 189). ***This Petition for Common-Law Writ of Certiorari to the COA was filed on the 150th day after Campbell's petition for rehearing was denied* (*Appendix TT* at App. 189)**.

APPENDIX LL

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 434, September Term 2004
(No. 1713, September Term 2003,
Court of Special Appeals)

GREGORY SHAWN MERCER, [Petitioner] v.

WILLIAM ALOYSIOUS THOMAS, III, [Respondent]

ORDER

The Court having considered the motion for clarification and motion for certification that Federal questions were raised and decided filed in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motions be, and they are hereby, denied.

s/ Robert M. Bell
CHIEF JUDGE

DATE: July 18, 2005

APPENDIX MM

No. 04-1676

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY SHAWN MERCER, Petitioner v.

WILLIAM ALOYSIOUS THOMAS, III, et al., Respondents

On Petition for Writ of Certiorari to the Court of Appeals of Maryland

MOTION TO ORDER OR COMPEL

MOTION TO APPOINT COUNSEL FOR JURY

MOTION TO EXTEND LEAVE FOR JURY TO INTERVENE AND FILE A CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

GREGORY SHAWN MERCER, PRO SE
Counsel of Record
3114 Borge Street
Oakton, Virginia 22124
(703)-591-4662

Filed: July 14, 2005 Received: July 15, 2005

TABLE OF AUTHORITIES

Amendment VII to the U. S. Constitution [App.156]

COMES NOW the Petitioner, Gregory Shawn Mercer, pro se, and moves this Honorable Court to Order or Compel the retired trial judge and parties present at the December, 1991 trial of Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company, a body corporate to provide this Court with the December 4, 1991 Voir Dire Sheet containing prospective jurors and the December 13, 1991 Jury Verdict Sheet signed by the Forewoman. Further, Petitioner moves this Honorable Court to appoint counsel to contact the actual Campbell, supra, jury to inform them that their unanimous jury verdict of December 13, 1991was nullified by the trial judge in what the Court of Appeals of Maryland Petitioner Campbell (Respondent Campbell, herein) has alleged was an erroneous Judgment Notwithstanding the Verdict (J. N. O. V.). Finally, Petitioner moves this Honorable Court to extend leave for the jury to intervene in order to defend their December 13, 1991 verdict and file a Conditional Cross-Petition for Writ of Certiorari to the Court of Appeals of Maryland. In support of his motion, Petitioner states as follows:

1. Petitioner Mercer has been convinced that Respondent Campbell (hereafter Campbell) has signed a settlement agreement in Respondent Baltimore Gas and Electric's (hereafter BGE's) interest containing a confidentiality clause.

2. While Petitioner has no proof of this fact since he was not provided with a copy, Respondent Campbell's actions or lack thereof since shortly after his January 21, 2005 Motion for Reconsideration was filed in the Court of Appeals of Maryland (hereafter COA) seriously suggest that an agreement does exist.

3. Campbell's COA Petition was "denied as there has been no showing that review by certiorari is desirable and in the public interest" on December 23, 2004. This was a substantive ruling therefore a Conditional Cross-Petition to this Court would be for Writ [of] Certiorari to the COA and not the Court of Special Appeals of Maryland (hereafter COSA).

4. Campbell's COA Petition presented the questions to the COA requesting critical review of the fairness and justness of Maryland's contributory negligence common law:

> **F1)** Whether or not the Judgment N. O. V. of December 13, 1991 was an irregularity subject to Maryland Rule 2-535(b) because the Circuit Court erred when it failed to resolve all inferences in the light most favorable to Petitioner/Plaintiff requiring consideration of the Jury Verdict as a Last Clear Chance Jury Verdict which presupposed Contributory Negligence on the part of the Petitioner but still would allow him to recover for his injuries.
>
> **F2)** Whether or not a Last Clear Chance Jury Verdict is consistent with the findings of the Circuit